

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-216248

DATE: January 22, 1985**MATTER OF:**

Bay Decking Company, Inc.

DIGEST:

1. GAO will not review affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of the procuring officials or that definitive responsibility criteria in a solicitation have not been applied.
2. GAO will not review whether a contractor actually complies with specifications during the performance of a contract because that is a matter of contract administration.
3. A solicitation must be read as a whole in a reasonable manner and is not ambiguous if it is not subject to more than one reasonable interpretation.

Bay Decking Company, Inc., protests the proposed award of a contract to any bidder other than itself under invitation for bids (IFB) No. N00123-84-B-0636, issued by the Naval Regional Contracting Center, Long Beach, California

We deny the protest.

The solicitation required unit and extended prices on a per-square-foot basis for removal and replacement of deck tile and terrazzo on vessels being repaired at the Long Beach Naval Station and in the Port Hueneme, California, area.

The protester asserts that Fryer-Knowles, the low bidder, is not responsible since it has given specific notice that it will not comply with an IFB requirement to provide products that are on a referenced Qualified

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Products List (OPL). If we find that compliance with the OPL was not mandatory, Bay Decking then protests that the solicitation was ambiguous.

The solicitation, at paragraph C.9., Terrazzo Installation, requires the contractor to "mix and install terrazzo deck covering conforming to MIL-D-3134H, Type 1, Class One or 2." Military Specification MIL-D-3134H, Deck Covering Materials, incorporates by reference a OPL 3134-64 of October 21, 1983. In addition, the solicitation, at paragraph C.3., requires that all work be in accord with certain specifications and references as applicable; one of the references listed is the Naval Sea Systems Command (NAVSEA) Technical Manual, Chapter 634, Change 7: Terrazzo-Substitute Deck Systems. Change 7 approves certain alternatives to the materials listed in the military specification.

Paragraph C.1.9. of the solicitation requires the successful bidder to submit samples of the product to be used to the contracting officer within 72 hours after award. There is no requirement, however, that bidders identify the product they intend to use either in their bids or before award.

Bay Decking asserts that the low bidder is not responsible since it intends to use a resin terrazzo material that is among the alternatives listed in change 7. Fryer-Knowles is supplying this product to the Navy under an existing contract, and the Navy confirms that it also will be supplied if the firm is awarded the protested contract.

The protester asserts that use of an alternative terrazzo is not permitted, since a document such as change 7 that is merely referenced in a solicitation for use "as applicable" cannot supersede a military specification that incorporates a OPL. Further, according to the protester, if it had known that other than OPL materials would be acceptable, its bid price would have been lower. The Navy, however, argues that under any reasonable reading of the solicitation as a whole, either a OPL product or one of the alternatives listed in change 7 may be supplied.

Since bidders were not required to identify the product that they intended to supply anywhere in their bids and Fryer-Knowles has not taken exception to any provisions of the solicitation, we find that the bid on its face is responsive. The question of the firm's capability to supply an acceptable product, therefore, involves Fryer-Knowles' responsibility. This is because responsibility refers to a bidder's apparent ability and capacity to perform all of the contract requirements. Raymond Engineering, Inc., B-211046, July 12, 1983, 83-2 CPD ¶ 83.

The Navy here has made an affirmative determination that Fryer-Knowles is a responsible prospective contractor. Our Office will not review such determinations absent a showing of possible fraud or bad faith on the part of the contracting officials or that definitive responsibility criteria in the solicitation have not been applied. A definitive responsibility criterion is an objective standard of responsibility--such as a particular level of specific experience--that a bidder must possess as a prerequisite to award. Yardney Electric Corp., 54 Comp. Gen. 509 (1974), 74-2 CPD ¶ 376; REDM Corp., B-211197, Apr. 21, 1983, 83-1 CPD ¶ 428.

The protester cites our decision in Data Test Corp., 54 Comp. Gen. 499 (1974), 74-2 CPD ¶ 365, for the proposition that our Office will also review an affirmative determination when a protester gives specific notice that it will not comply with solicitation requirements. The case, however, is not relevant here; it involves a requirement for a commercial, off-the-shelf product that we regarded as a definitive criterion, thus triggering our review under the above standard. In our opinion, a solicitation provision that requires compliance with a military specification or a Navy technical manual incorporated by reference does not constitute a definitive responsibility criterion.

Moreover, since the successful bidder is not required to submit samples of the product to the contracting officer until 72 hours after award, approval of that sample is not a prerequisite to award. We generally will

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not review a protest alleging that a low bidder intends to perform a contract in a manner inconsistent with the specifications, and whether a contractor actually furnishes a product meeting specifications, is a matter of contract administration that we do not review. S.A.F.E. Export Corp., B-213027, June 27, 1984, 84-1 CPD ¶ 675; ASC Medical Service, Inc., B-213724, Dec. 30, 1983, 84-1 CPD ¶ 45.

With regard to the protester's allegation that the solicitation was ambiguous, we agree with the Navy that the IFB is not subject to more than one reasonable interpretation. The mere allegation that a solicitation is ambiguous does not make it so. Flexfab, Inc., B-213327, Dec. 16, 1983, 83-2 CPD ¶ 701. It is the obligation of the offeror to read the solicitation as a whole and in a reasonable manner. Byrd Tractor, Inc., B-212449, Dec. 13, 1983, 83-2 CPD ¶ 677; Tymshare, Inc., B-193703, Sept. 4, 1979, 79-2 CPD ¶ 172. When the section of the IFB that contains the military specification incorporating the OPL is read together with the referenced NAVSEA Technical Manual, listing acceptable alternates, we find that the requirements are neither confusing nor ambiguous.

We deny the protest.

for *Supervisor Efron*
Comptroller General
of the United States